

120.00394

MC-1000

Petition for Review of Denial of Request to Remove Name From Gang Database

Instructions: Please read the instructions on page 2 of this form before completing and filing this form.

Notice to the Clerk: This petition is filed under Penal Code section 186.35 and California Rules of Court, rule 3.2300. Rule 3.2300(c) requires the presiding judge of each superior court to designate one or more judges to hear such petitions. This petition must be submitted to one of those judges.

Clerk stamps date here when form is filed.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 04 2019

Sherri R. Carter, Executive Officer/Clerk
By: Glorietta Robinson, Deputy

Fill in court name and street address:

Superior Court of California, County of Los Angeles
Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

Court fills in case number when form is filed.

Case Number:

19STCP03794

1 Name of Person Filing This Petition:

David Lievano Huevo

I am: ☒ The person whose name is in the gang database.
☐ The parent or guardian of the child under 18 whose name is in the gang database.

Your lawyer in this case (if you have one):

Name: Sean Garcia-Leys State Bar No.: 313558

Firm Name: The Connie Rice Institute for Urban Peace

Address (If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer, give your information.)

Address: 1910 W. Sunset Blvd., Suite 800

City: Los Angeles State: CA Zip: 90026

Telephone: (213) 404-0130 Fax: E-mail: sgarcialeys@urbanpeaceinstitute.org

2 Decision You Are Requesting Be Reviewed

I am seeking review of the following law enforcement agency's denial of my request under Penal Code section 186.34 to remove my name or the name of my child or ward from a shared gang database. (Complete a. or b.)

Name of law enforcement agency: Los Angeles Police Department

Address: P.O. Box 30158

City: Los Angeles State: CA Zip: 90030

☐ a. The decision denying the request was served on me/my client by the law enforcement agency:
☐ By personal delivery ☐ By mail on (date:)

You must attach a copy of the written verification denying your request.

☒ b. The agency did not respond to my request, which I submitted in writing:
☐ By personal delivery ☒ By mail on (date:) Jul 8, 2019

You must attach a copy of your request and written documentation contesting your designation.

3 Reason for This Petition for Review

I am seeking review of the denial of my request on the basis that the law enforcement agency has not established by clear and convincing evidence the active gang membership, associate status, or affiliate status of the person whose name I requested be removed from the shared gang database.

4 Written Argument

☐ I have attached my written argument about why, based on the record specified in Penal Code section 186.35(b), the law enforcement agency has failed to establish by clear and convincing evidence the gang membership, associate status, or affiliate status of the person whose name I requested be removed from the shared gang database.

NOTE: You do not have to submit written argument, but if you wish to, you can either include that argument in this petition or serve and file the argument separately within 15 days after the law enforcement agency serves and files the record in this proceeding. Please see rule 3.2300(f) for information about submitting written argument.

RECEIVED
CITY CLERK'S OFFICE
2019 SEP -9 PM 2:44
CITY CLERK
DEFUT
REFERRED TO CITY ATTORNEY
FOR DISPOSITION
SEP 10 2019



5 Request for or Waiver of Oral Argument

I understand oral argument can be requested in this case. I ☒ am ☐ am not requesting oral argument.

Date: Aug 16, 2019

Sean Garcia-Leys

Type or print your name

 *Signature*

Instructions

This form is only for seeking review by a court of a local law enforcement agency's written or deemed denial of a request under Penal Code section 186.34 to remove an individual's name from a shared gang database.

You must serve and file this form **no later than 90 calendar days** after either (1) the law enforcement agency serves you with written verification of its decision denying your request under Penal Code section 186.34 to remove your name from a shared gang database or, if you are the parent or guardian of a child under 18 whose name is in the gang database, the child's name; or (2) the date your request was deemed denied under Penal Code section 186.34(e). **If your petition is late, your request will be dismissed.**

To serve and file this form, complete the following steps:

1. Fill out this form

In the second box on the right-hand side: Fill in the name of the county for the superior court where you plan to file the petition and the street address for the court (see rule 3.2300(d)(3) for information about where to file this form).

In Item 1: Fill in your name and check the box to indicate if you are the person whose name is in the gang database or that person's parent or guardian.

Fill in the name and firm name of your lawyer, if you have one.

Fill in your lawyer's contact information or, if you do not have a lawyer, your contact information.

In Item 2: Fill in the name and address of the law enforcement agency whose decision you are petitioning the court to review.

(a) If you received a written decision from the law enforcement agency denying your request to remove your name or the name of your child or ward from the gang database, attach a copy to the form.

(b) If you did not receive a decision, and your request was deemed denied, complete the date and way in which you submitted the request.

In Item 4: Check to indicate if you are attaching written argument to this request.

In Item 5: Indicate whether or not you want to have oral argument on your petition or whether you want to give up (waive) oral argument and have the court decide the case without oral argument.

At the end of the form: Print and sign your name and fill in the date you signed the form.

2. Make copies of the form

Make a copy of the completed form for your records and one for the law enforcement agency.

3. Serve the form

Serve a copy of the completed form and any required attachment on the law enforcement agency and keep proof of this service. You can get information about how to serve court papers and proof of service on the California Courts Online Self-Help Center at www.courts.ca.gov/selfhelp-serving.htm.

4. File the form

Take or mail the original completed form with a copy of the law enforcement agency decision attached and proof of service on the law enforcement agency to the civil clerk's office of the court where you file this form. It is a good idea to take or mail an extra copy to the clerk and ask the clerk to stamp it to show that the original has been filed.

Pay the \$25 filing fee and file this form, or if you are unable to pay this fee, file a request to waive court fees (form FW-001) in the court.



July 8, 2019

Los Angeles Police Department
P.O. Box 30158
Los Angeles, CA 90030

RE: David Lievano's request for removal from shared gang databases, pursuant to California Penal Code § 186.34 (e)

To Whom It May Concern,

I am writing on behalf of my client, David Lievano, to contest your agency's designation of Mr. Lievano as a suspected gang member, associate, or affiliate and to request that you remove Mr. Lievano's name and any information about Mr. Lievano collected by your agency from all shared law enforcement gang databases. This request includes removal from the CalGang database and also from any database maintained by your agency that documents gang allegations such as an Electronic Field Interview Database that is shared with any other agency, either directly or through "fusion centers" such as the Los Angeles Joint Regional Intelligence Center. Your agency has 30 days from the submission of this request to reply with written verification of your agency's decision. A refusal of this request may be appealed in Superior Court.

Mr. Lievano is Not a Gang Member, Associate, or Affiliate.

Mr. Lievano is not a gang member, associate, or affiliate.

The Los Angeles Police Department Has Not Provided Clear and Convincing Evidence of Mr. Lievano's Alleged Gang Membership, Association, or Affiliation.

In a letter dated March 6, 2019, your agency wrote a Response to Request for Status in the Shared Gang Database Letter to Mr. Lievano stating that your agency has designated Mr. Lievano as a gang member, affiliate, or associate, in a shared gang database. However, your agency did not provide any evidence with the response. Instead, your agency provided only a checklist of conclusory statements. Without any evidence, it is impossible for Mr. Lievano to do any more than simply deny that he is a gang member or associate, which he does.

Furthermore, because your agency provided only a one-page response without any evidence, if your agency denies this request and Mr. Lievano files a petition for review in the Superior Court, your agency will be prohibited from presenting any more evidence to the court. As a result, Penal Code section 186.35 effectively guarantees that a court will order your agency to remove Mr. Lievano's record upon Mr. Lievano's request.

Removing Non-Gang Members Like Mr. Lievano From Shared Gang Databases Will Improve Public Safety.

Mr. Lievano has retained the Urban Peace Institute to represent him in this matter pro bono. The Urban Peace Institute is a non-profit organization whose mission is to reduce community violence by promoting a public health approach to gangs. We have found that overbroad targeting of gang suppression by law enforcement decreases public safety because it creates barriers to social integration and erodes trust between communities and law enforcement. We have accepted Mr. Lievano as a pro-bono client because (1) he was referred to us by a trusted community partner who assures us he is not a gang member, (2) because we believe that his removal from gang databases will remove barriers to his continued integration in his community, and (3) because ending the targeting of gang suppression against non-gang members like Mr. Lievano will improve your community's trust in your agency. We hope that you will agree with us and that you will remove Mr. Lievano from all shared gang databases.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean Garcia-Leys', with a long horizontal line extending to the right.

Sean Garcia-Leys
Senior Staff Attorney

Attachments:

Response to Request for Status in the Shared Gang Database Letter

Attachment

1

LOS ANGELES POLICE DEPARTMENT

MICHEL R. MOORE
Chief of Police



P.O. Box 30158
Los Angeles, CA 90030
Telephone: 310-482-6402
TDD: (877) 275-5273
Ref #:
(ref. no. entity typing corresp.)

ERIC GARCETTI
Mayor

Response to Request for Status in the Shared Gang Database Letter

Dear Mr. Garcia-Leys,

Date: March 7, 2019

On March 6, 2019, the Los Angeles Police Department (LAPD) received a written request from you inquiring about the inclusion of Huezo, David Lievano into the shared gang database.

After review it was determined that:

- ☐ The person for which inclusion is being requested is not in the database.
- ☒ The person for which inclusion is being requested is in the database.

Agency making the designation: _____

If the request asked for the basis of the designation and the designation was made by the LAPD, criteria may be documented below. **If the designation was not made by the LAPD, further information may be obtained by contacting the agency making the designation, as follows:**

Outside Agency Name: _____ Phone Number: _____

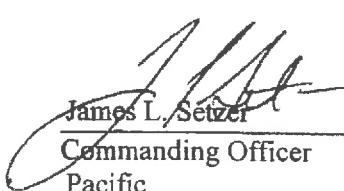
The following criteria were used to make this determination:

- ☐ Subject has admitted to being a gang member.
- ☐ Subject has been arrested for offenses consistent with gang activity.
- ☐ Subject has been identified as a gang member by a reliable informant/source.
- ☒ Subject has been seen associating with documented gang members.
- ☐ Subject has been seen displaying gang symbols and/or hand signs.
- ☒ Subject has been seen frequenting gang areas.
- ☒ Subject has been seen wearing gang dress.
- ☐ Subject is known to have gang tattoos.

Should you have any questions regarding this correspondence or have inquiries regarding referral programs, please call Officer/Detective Melvin Campos, Serial No. 34963,
Pacific G.I.T Area, at phone number 310-482-6402.

Respectfully,

MICHEL R. MOORE
Chief of Police


James L. Setzer, Captain
Commanding Officer
Pacific Area

AN EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER
www.LAPDonline.org
www.joinLAPD.com

12.16.16 (08/18)

TELEPHONE NO.: (213) 404-0130 FAX NO. (Optional):
E-MAIL ADDRESS (Optional): SGarciaLey@UrbanPeaceInstitute.org
ATTORNEY FOR (Name): David Lievano Huezo

FOR COURT USE ONLY

MAILING ADDRESS:

BRANCH NAME: Stanley Mosk Courthouse

RESPONDENT/DEFENDANT: City of Los Angeles

PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL

CASE NUMBER:

19STCP03794

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
1910 Sunset Blvd., Suite 800
Los Angeles, CA 90026
3. On *(date)*: September 6, 2019 I mailed from *(city and state)*: Los Angeles, CA
the following **documents** *(specify)*:
Notice of Case Assignment; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum; Petition for
Review of Denial of Request to Remove Name From Gang Database; Proof of Service
- ☐ The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)*
(form POS-030(D)).
4. I served the documents by enclosing them in an envelope and *(check one)*:
 - a. ☒ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - b. ☐ **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this
business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is
placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in
a sealed envelope with postage fully prepaid.
5. The envelope was addressed and mailed as follows:
 - a. **Name** of person served:
 - b. **Address** of person served:

☒ The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 6, 2019

Sean Garcia-Levs

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

SHORT TITLE: Lievano Huevo v. City of Los Angeles	CASE NUMBER: 19STCP03794
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ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)

(This Attachment is for use with form POS-030)

NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:

<u>Name of Person Served</u>	<u>Address (number, street, city, and zip code)</u>
Clerk of the City of Los Angeles	200 N. Spring Street; City Hall - Room 360 Los Angeles, CA 90012
Los Angeles Police Department	P.O. Box 30158 Los Angeles, CA 90030